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10/743,380	12/23/2003	John M. Carnahan III	12104-0002	2710
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CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005			PARSLEY, DAVID J	
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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/743,380  
Filing Date: December 23, 2003  
Appellant(s): CARNAHAN, JOHN M.

Christopher W. Brody  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1-11-06 appealing from the Office action mailed 8-9-05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-2 and 4-11.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

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5,722,196	Flynn	3-1998
1,036,574	Crane	8-1912

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,722,196 to Flynn.

Referring to claim 1, Flynn discloses a method of detecting fishing conditions to allow for selection of a proper fishing lure comprising, providing a screening device – at 10, having an elongated frame – see figures 2-3, the elongated frame supporting an elongate screen – at 52, the screen attached to the frame to form a curved configuration in use – see for example figure 1, supporting the frame whereby a user inserts at least a portion of the frame and screen into shallow water, with the frame oriented so the elongate screen spans a depth of the water near a bottom of the shallow water and close to a surface of the water – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63, maintaining at least a portion of the frame in the water for a period of time to collect organisms in the water on the screen – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines

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36-63, removing the portion of the frame and screen from the water and inspecting the screen for collected organisms and selecting the fishing lure based on the organisms collected – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63. Flynn further discloses the frame has one or more support portions – at 16,18,40,42, and one or both of the support portions are embedded in a bed underlying the water as part of the insertion step – see for example figure 1 and column 5 lines 36-63, where a heavy object is placed on the device which allows for the portion of the device resting on the waterbed to be at least partially embedded in the waterbed.

Referring to claim 2, Flynn discloses the frame is collapsible and the frame is collapsed after completing the inspecting step – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63.

Referring to claim 4, Flynn discloses the frame includes one or more handle portions – at 38, that can be grasped by a user for the insertion step – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63.

Referring to claim 7, Flynn discloses a screening device for determining fishing conditions comprising, a frame – see figures 2-3, having a pair of side rails 16,18, and at least two cross members – at 40,42, the side rails include at least one handle portion – at 38, and one support portion – at 14, a flexible screen – at 52, having opposing ends and opposing sides – see figure 1, each opposing side aligned and attached to a respective side rail – see figure 1, at least one opposing end being a free end and extending between the pair of side rails – see figure 1, the flexible screen having a width such that the free end is curved in shape during use – see for example figure 1.

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Referring to claim 9, Flynn discloses each end of the screen is free and curved in shape during use – see for example figure 1.

Referring to claim 10, Flynn discloses the cross members and side rails are immobile with respect to each other when the side rails are interconnected by the cross members – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn as applied to claim 1 above.

Referring to claims 5-6, Flynn further discloses larvae or pupae of aquatic insects are collected and a lure is selected based on the collected larvae or pupae and where the collected aquatic insects are located on the screen – see for example figure 1, column 1 lines 44-67, column 2 lines 1-33 and column 5 lines 36-63. Flynn does not disclose the fishing lure is a fly-type lure. However, it would have been obvious to one of ordinary skill in the art to take the device of Flynn and add the lure being a fly-type lure, so as to allow for the proper fishing attractant to be deployed by the fisherman on that particular body of water.

Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn as applied to claim 7 above, and further in view of U.S. Patent No. 1,036,574 to Crane.

Referring to claim 8, Flynn further discloses the cross members having a pair of cross member segments – see for example at 40,42 and proximate 44-50, the cross members – at 40,42, are pivotally attached to a side rail at one end so that the cross member segments and side rails can fold up – see for example figures 2-3 and column 4 lines 23-45. Flynn does not disclose other ends of each segment pivotally attached together. Crane does disclose other ends of the cross members – at 3,6, are pivotally attached together – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Flynn and add the segments of the cross members being pivotally attached to each other, so as to allow for the device to be easily folded up for storage and or transportation.

Referring to claim 11, Flynn as modified by Crane further discloses the cross member segments lock to keep the side rails spaced apart for collecting purposes – see figure 1 of Flynn and – see at 2 and 7-10 in figures 1-2 of Crane.

#### **(10) Response to Argument**

Regarding claim 1, the Flynn reference discloses one or more supports – at 16 and 18 which are placed on the bottom of the surface of the water and are embedded in the water in that a heavy weight is placed on the device to allow the supports – at 16 and 18 to sink into the bottom of the body of water as seen in figure 7 and column 5 lines 36-63. As seen in figure 7, the bottom portions of the supports – at 16 and 18 are shown below the level of some of the pebbles/rocks in the bottom of the body of water and thus the supports being below portions of the bottom of the body of water are embedded in the bottom of the body of water. Further,

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appellant argues that the embedding step comprises more than just placing the device in a body of water, however the claims do not elaborate in what constitutes the embedding step and as seen above it is deemed that the device of Flynn is embedded in the bottom of the body of water to hold the device in place in the body of water.

Regarding claim 7, the Flynn reference discloses a pair of side rails – at 16 and 18 extending along the sides of the device as seen in figure 1 and a flexible screen – at 52 with opposing sides proximate the side rails as seen in figure 1. Appellant argues that the flexible screen is not attached to the side rails. As seen in figure 1 the bottom of the flexible screen takes the shape of the L-shaped side rails – at 16, 18 and appears to be in contact with the side rails as seen proximate items 16,18 in figure 1. Further, as seen in figure 1 the flexible screen – at 52 is shown disposed on the outside of the rails – at 12,14, with the rails being directly attached to the side rails – at 16,18 via items 60-68 as seen in figure 1. With the rails at 12,14 being directly attached to the side rails – at 16,18 with the flexible screen disposed on the outer surfaces of the rails – at 12,14, the flexible screen – at 52, must be attached to the side rails – at 16,18. However, even if the flexible screen – at 52 is not directly attached to the side rails – at 16,18, the flexible screen is at least attached to the side rails via the rail members – at 12,14 as seen in figure 1 in that the rails – at 12,14 are directly connected to the side rails – at 16,18. The term “attached” as seen in claim 7, does not imply are require that the flexible screen is directly connected via surface to surface contact with the side rails.

Regarding claims 8 and 11, the Flynn reference discloses cross members – at 40,42, pivotally attached to the side rails – at 16, 18 and can fold as seen in figure 4. The Crane reference US 1036574 discloses a net device – at 5, used to collect objects being minnows in a



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body of water where the device of Crane has side rails – at 3 and cross members – at 6 which are pivotally connected – see at 2,8 and at the connection between items 3 and 6 in figure 1, which are capable of folding up as seen in figure 2 which shows the device in its folded orientation. Therefore, it is deemed that the combination of the references is proper so as to allow for the device to be easily folded up for storage and or transportation.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

David Parsley *DP*

Conferees:

Kurt Rowan *KR*

Peter Poon

  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**  
*1/31/06*